IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1972

No. 71-1812

JAKE LAYNE, BILL WELLS, EDDIE TAYLOR, F. D. SALISBURY, and CLYNARD JONES, Suing as Residents, Patrons, Taxpayers, Legal Voters and Citizens of the Martin School District of the Commonwealth of Kentucky, and on Behalf of All Other Persons Similarly Situated - - - - - - - - - Petitioners

versus

BOARD OF EDUCATION OF FLOYD COUNTY, KENTUCKY, CHARLES CLARK, County Superintendent of Schools of Floyd County, Kentucky, JOHN M. STUMBO, Chairman of the Board of Education of Floyd County, Kentucky, DR. J. H. ALLEN, Member of the Board of Education of Floyd County, Kentucky, BILL BLAIR, Member of the Board of Education of Floyd County, Kentucky, ROSS COOLEY, Member of the Board of Education of Floyd County, Kentucky, O. R. HOWARD, Member of the Board of Education of Floyd County, Kentucky, BOARD OF EDUCATION OF FLOYD COUNTY, KENTUCKY, As a Body Politic - - - - - - - - Respondents

PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS OF KENTUCKY

JOE HOBSON
Suite 2A, Richmond Plaza
Prestonsburg, Kentucky 41653
Counsel for Petitioners

WESTERFIELD-BONTE CO., INC., 618 W. KENTUCKY, LOUISVILLE, KY.

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v.

BOARD OF EDUCATION OF FLOYD COUNTY, KENTUCKY, CHARLES CLARK, County Superintendent of Schools of Floyd County, Kentucky, JOHN M. STUMBO, Chairman of the Board of Education of Floyd County, Kentucky; DR. J. H. ALLEN, Member of the Board of Education of Floyd County, Kentucky, BILL BLAIR, Member of the Board of Education of Floyd County, Kentucky, Ross COOLEY, Member of the Board of Education of Floyd County, Kentucky, O. R. HOWARD, Member of the Board of Education of Floyd County, Kentucky, BOARD OF EDUCATION OF FLOYD COUNTY, KENTUCKY, As a Body Politic - - - - - *Respondents*

PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS OF KENTUCKY

To the Honorable the Chief Justice and the Associate Justices of the Supreme Court of the United States:

Your Petitioners, Jake Layne, Bill Wells, Eddie Taylor, F. D. Salisbury, and Clynard Jones, suing as residents, patrons, taxpayers, legal voters, and citizens of the Martin School District of the Commonwealth of Kentucky, and on behalf of all other persons similarly situated, pray that a writ of certiorari issue to review the opinion and judgment of the Court of Appeals of the State of Kentucky rendered in these proceedings on October 22, 1971.

OPINIONS BELOW

The opinion of the Judge of the Floyd Circuit Court is unreported and appears at Appendix A, pp. 17-20. The opinion of the Court of Appeals of Kentucky is reported in 474 S. W. 2d 397. A copy of that opinion appears in Appendix B, pp. 21-25.

The caption of this case, while pending in the Court of Appeals of Kentucky, was as follows:

> FLOYD COUNTY BOARD OF EDUCATION; CHARLES CLARK, Superintendent of Schools of Floyd County, Kentucky; JOHN M. STUMBO, Chairman of the Floyd County Board of Education of Floyd County, Kentucky; DR. J. H. ALLEN, Member of the Floyd County Board of Education of Floyd County, Kentucky; BILL BLAIR, Member of the Floyd County Board of Education of Floyd County, Kentucky; ROSS COOLEY, Member of the Floyd County Board of Ed-

ucation of Floyd County, Kentucky; O. R. Howard, Member of the Floyd County Board of Education of Floyd County, Kentucky

Appellants

v.

Jake Layne, Bill Wells, Eddie Taylor, F. D. Salisbury, and Clynard Jones, Suing as Residents, Patrons, Taxpayers, Legal Voters and Citizens of the Martin School District of Martin County Kentucky, and On Behalf of All Other Persons Similiarly Situated

Appellees

The number of this case was F-237-70

JURISDICTION

The order or judgment of the Court of Appeals of Kentucky was entered on October 22, 1971. (See Appendix B, pp. 21-25.)

The Petitioners filed a petition for rehearing with the Court of Appeals within the time required by the rules of that Court. The petition for rehearing was denied on January 21, 1972.

No formal entry of an order was entered denying the petition for rehearing, but, on January 21, 1972, the Court of Appeals of Kentucky, according to its custom, issued a mandate showing the overruling of the petition for rehearing. A copy of said mandate appears in Appendix C, p. 26.

The jurisdiction of this Court is invoked under 28 U.S.C. §1257(3).

QUESTIONS PRESENTED

The Board of Education of Floyd County, Kentucky, a body politic which derives its powers solely from the statutory provisions of the Commonwealth of Kentucky, has undertaken to ignore the provisions of a judgment entered on January 21, 1939, by the Floyd Circuit Court, which judgment was never appealed, directing it to maintain a twelve-grade school in the City of Martin, Kentucky, and enjoining it from abandoning, discontinuing, or suspending the teaching of any of the twelve grades in said school, so long as there is a sufficient number of pupil children residing within the said district to meet the legal requirements for maintaining a twelve-grade school. It is the plan of the respondent, Board of Education of Floyd County, Kentucky, to ignore this judgment and to transport children residing in the City of Martin to another high school over a dangerous highway.

The questions thereby arising are whether or not a board of education may destroy, annul, set aside, vacate, reverse, modify, or impair the final judgment of a court of competent jurisdiction so as to take away private rights which have become vested by the judgment.

CONSTITUTIONAL PROVISIONS INVOLVED

Constitution of the United States, Section X:

> ". . . nor pass any law impairing the obligation of contracts . . ."

Constitution of the United States, Amendment XIV, §1:

> ". . . nor shall any state deprive any person of life, liberty, or property without due process of law . . ."

STATEMENT OF THE CASE

On January 21, 1939, in an action between Orris Gearheart, W. S. Frazier, J. D. Adams, Dennis Martin, E. K. Frazier, Demra Taylor, Perry Osborne, W. G. Jarrell, and D. E. Chafin, residents of the Town of Martin, plaintiffs, and Board of Education of Floyd County, Kentucky, Harold Bailey, Bill Allen, Charles Burnette, Alex Stephens, Dr. W. D. Osborne, Town Hall, Superintendent of Schools, Amanda Dingus, W. J. Dingus, Jr., W. D. Dingus, Elizabeth Dingus, Jamima Qualls, Olva Dingus, and Tally Dingus, defendants, it was adjudged by the Floyd Circuit Court of the Commonwealth of Kentucky as follows:

> "That the Martin Consolidated School District was created and organized about the year 1923 and by agreement between the citizens and taxpayers of said district of the one part and the Floyd County Board of Education of the other part, a twelve grade school was established in the

Town of Martin said Martin Consolidated School District, which twelve grade school, ever since has been and is now being maintained. The citizens and taxpayers of said district, as a part of said arrangement with Floyd County Board of Education, purchased the school site in the Town of Martin, for the sum of $1500.00; which was conveyed to said Floyd County Board of Education, without charge, said parcel of land being valued by the parties at the sum of $5,000.00 and in addition thereto made substantial contributions toward construction of the first building on said site. A special consolidated school tax was voted by the legal white voters of said district about the year 1923 of 75¢ on the $100.00 valuation of all taxable property in said district to supplement the revenues available from the common school levy for the running expenses of said school, which tax was reduced to 50¢ on $100.00 valuation about the year 1928. Thereupon, by further agreement between said Board of Education and the citizens of said Consolidated School District, a second building was erected on said school site in the Town of Martin and to pay part of the cost thereof there was submitted to and voted by the legal voters of said district a bond issue of $12,000.00, the proceeds from the sale of said bonds being used in the construction of said new brick building for use in enlarging the twelve grade school already existing on said site; that the original building, which was a frame structure, is now being used for a gymnasium as well as an emergency class room and that the County Board of Education has been required, during the last school year to rent rooms in the Town of Martin for one or more of the subjects taught in said school.

"There is now being maintained a twelve grade school in said Martin Consolidated School District, established as above stated, and the Court is of the opinion that it would be an abuse of discretion on the part of the defendants, Board of Education of Floyd County, and Town Hall, Superintendent of Schools, to discontinue, abandon or suspend the teaching of any of the twelve grades at said school now located in said district, so long as there is a sufficient number of pupil children in said district to meet the legal requirements or to require the pupil children of said district in any of the twelve grades to attend school outside of said district.

"It is ordered, therefore, that the defendants, Board of Education of Floyd County, Kentucky, and the individual members thereof, and Town Hall, Superintendent of Schools of Floyd County, and their successors, and each of them, are hereby directed to maintain the twelve grade school now located in the Town of Martin and with said Martin Consolidated School District, and to take any and all appropriate action necessary and incidental thereto, including the hiring of teachers, paying teachers' salaries, prescribing full and complete courses in the twelve grades and defraying all expenses necessary and incidental thereto; that said defendants and their successors in office and each of them, be and they are hereby perpetually enjoined from abandoning, discontinuing, or suspending the teaching of any of the twelve grades in said school now located in the Town of Martin, and within the Martin Consolidated School District, so long as there is a sufficient number of pupil children residing within said district to meet the legal requirements for maintaining a twelve grade school, and from requiring the pupil chil-

dren in said district, or any of them, in all or any of said twelve grades, to attend any school located outside of said District, all to the end that said twelve grade school now located in said Martin Consolidated School District shall continue to be maintained and operated as a twelve grade school without being disturbed.

"The Court further finds that the defendants are not acting within their reasonable discretion in planning to build a school for high school pupils outside of said Martin Consolidated School District and on the site referred to in the evidence and in purchasing the said proposed school site for the price of $4,000.00. It is adjudged, therefore, that the defendants, Floyd County Board of Education and the individual members thereof, and Town Hall, Superintendent of Schools, and each of them, and their successors in office, be and they are hereby perpetually enjoined and restrained from purchasing or leasing, or accepting a deed of conveyance or lease or other instrument for the purpose of constructing a high school or other school building upon the site described in the petition or any other site, from the defendants Amanda Dingus, W. J. Dingus, Jr., W. D. Dingus, Elizabeth Dingus, Jamima Qualls, Olva Dingus and Tally Dingus, or either of them, or their successors or assigns, near the Forks of Beaver Creek, and from expending any money therefor, and from accepting any bid, or awarding any contract for the construction of a high school, or other building, upon said site." (See Appendix D, pp. 27-30.)

In 1969, thirty years after the entry of this judgment, the Board of Education of Floyd County, Ken-

tucky, decided to build a consolidated school at Eastern, some five miles from Martin and outside the boundaries of the Martin Consolidated School District, and, under this plan, would transport school children from within the Martin Consolidated School District of this new high school in open violation of the provisions of the judgment above mentioned. Suit was first filed to enjoin the Construction of the Eastern school. On the first appeal of this case, the Court of Appeals of Kentucky held that the Board could construct the new school but expressly reserved the question relative to the transportation by bus of the high school students from Martin.

> Lane v. Floyd County Board of Education, 442 S. W. 2d 587.

The case was then submitted to the same judge who found that the provisions of the judgment entered on January 21, 1939, were valid, and he upheld the judgment. The Court of Appeals reversed the judgment.

> Floyd County Board of Education v. Layne, 474 S. W. 2d 397.

The federal question now before this Court was raised in the Floyd Circuit Court where the action was first commenced and in the Court of Appeals of Kentucky by appropriate pleadings and briefs. A copy of the complaint first filed in the Floyd Circuit Court is filed and made a part of the appendix. See Appendix E, pp. 31-46). The portion of appellee's brief filed with the Court of Appeals of Kentucky which discusses the federal question involved in this action appears at Appendix F, pp. 47-48.

REASONS FOR GRANTING THE WRIT

A Board of Education May Not Destroy, Annul, Set Aside, Vacate, Reverse, Modify, or Impair the Final Judgment of a Court of Competent Jurisdiction so as to Take Away Private Rights Which Have Become Vested by the Judgment.

The citizens of the Martin Consolidated School District contributed a large amount of money to the building of the school facility at Martin and voted to levy taxes for this purpose. Furthermore, by agreement between the Board of Education and the citizens of the Martin Consolidated School District, a second building was erected in the Martin Consolidated School District and to pay part of the cost of this building, the legal voters of the Martin Consolidated School District voted a bond issue of $12,000.00, the proceeds from which were used in the construction of the new brick building for use in enlarging the said twelve-grade school already existing on the site.

The citizens of the Martin Consolidated School District, therefore, acquired property rights by reason of the entry of the said judgment dated January 21, 1939, and neither the Floyd Circuit Court nor the Court of Appeals of Kentucky had jurisdiction to vacate or modify any of the provisions of said judgment as such action would deprive the citizens of the Martin Consolidated School District of their property rights without due process of law and would be in irreconcilable conflict with Section X and the Fourteenth Amendment to the Constitution of the United States.

In the case of Pennsylvania Co. v. Scott, 144 A. L. R. 852, the rule on this question is thus stated:

> *"There are two reasons for this limitation of legislative power; one, that a judgment is property of which, under state and federal constitutional prohibitions, the judgment creditor cannot be deprived without due process of law; the other, that under our system of the division of governmental powers the legislature cannot invade the province of the judiciary by interfering with judgments or decrees previously rendered."* (Our Emphasis.)

To the same effect, see the following cases:

Arnold & M. Co. v. Industrial Commission, 314 Ill. 251, 145 N. E. 342, 40 A. L. R. 1470;

Springstun v. Springstun, 131 Wash. 109, 229 Pac. 14, 40 A L. R. 595.

This Court is committed to the same rule:

Collins v. Welsh, 75 F. 2d 894, 99 A. L. R. 1319;

Collins v. Welsh, 295 U. S. 762, 79 L. Ed. 1704, 55 S. Ct. 921;

McCullough v. Commonwealth of Virginia, 172 U. S. 102, 43 L. Ed. 382, 19 S. Ct. 134.

The case of McCullough v. Commonwealth of Virginia, *supra,* is squarely in point. In that case, in a very able opinion delivered by Mr. Justice Brewer, the position of the petitioners is squarely upheld, the Court saying:

> *"While it is undoubtedly the general rule of this court to accept the construction placed by the*

courts of a state upon its statutes and Constitution, yet one exception to this rule has always been recognized, and that in reference to the matter of contracts alleged to have been impaired. This was distinctly affirmed in Jefferson Branch Bank v. Skelly, 1 Black, 436, 443 (17:173, 771), in which the court, speaking by Mr. Justice Wayne, gave these reasons for the exception: 'It has never been denied, nor is it now, that the Supreme Court of the United States has an appellate power to revise the judgment of the supreme court of a state, whenever such a court shall adjudge that not to be a contract which has been alleged, in the forms of legal proceedings, by a litigant, to be one, within the meaning of that clause of the Constitution of the United States which inhibits the states from passing any law impairing the obligation of contracts. Of what use would the appellate power be to the litigant who feels himself aggrieved by some particular state legislation, if this court could not decide, independently of all adjudication by the supreme court of a state, whether or not the phraseology of the instrument in controversy was expressive of a contract and with the protection of the Constitution of the United States, and that its obligation should be enforced, notwithstanding a contrary conclusion by the supreme court of a state? It never was intended, and cannot be sustained by any course of reasoning, that this court should, or could with fidelity to the Constitution of the United States, follow the construction of the supreme court of a state in such a matter, when it entertained a different opinion.' The doctrine thus announced has been uniformly followed" (43 L. Ed. 382-38). (Our Emphasis.)

As the Legislature of the Commonwealth of Kentucky cannot destroy, annul, set aside, or vacate a judgment of a court of competent jurisdiction so as to take away private rights which have become vested in it by a judgment, certainly a board of education does not have such power as such board of education only has the powers granted to it by the statutes of the Commonwealth of Kentucky. The powers granted by Kentucky Revised Statutes to boards of education are as follows:

> *"Each school district shall be under the management and control of a board of education consisting of five members, to be known as the 'Board of Education of ....., Kentucky.' Each board of education shall be a body politic and corporate with perpetual succession. It may sue and be sued; make contracts; purchase, receive, hold and sell property; issue its bonds to build and construct improvements; and do all things necessary to accomplish the purposes for which it is created"* (Kentucky Revised Statutes, 160.160). (Our Emphasis.)

Consequently, it is quite plain that a board of education is merely an instrumentality of the Commonwealth of Kentucky and does not have the power to vacate, set aside, or ignore a judgment of a court of competent jurisdiction under which private rights have become vested.

It may be contended, however, that no private rights have vested under this judgment. This position can-

not be sustained. The private rights so acquired are as follows:

(1) The citizens of Martin purchased the school site for the sum of $1,500.00 and conveyed it to the Board of Education of Floyd County, Kentucky, without charge, the property being valued at the sum of $5,000.00.

(2) In addition to this gift, the same citizens made substantial contributions towards construction of the first building on this site.

(3) A special consolidated school tax was voted by the voters of said district about the year 1923 of 75 cents on the $100.00 valuation of all taxable property in the district to supplement the funds available from the common school levy for the running expenses of the school. This tax was reduced to 50 cents about the year 1928.

Later a second building was erected on this school site in the Town of Martin and to pay part of the costs thereof the legal voters of said district voted a bond issue of $12,000.00, the proceeds from the sale of such bond being used in the construction of the new brick building for use in enlarging the twelve-grade school.

(4) The original building, which was a frame structure, was used, prior to its destruction by fire in about 1969 or 1970, as a gymnasium and as an emergency classroom.

It is, therefore, quite apparent that the effect of the Court of Appeals of Kentucky is to take away from the petitioners private rights which have become vested by the judgment entered on January 21, 1939.

Such action, we submit, is in open violation of Section X and the Fourteenth Amendment to the Constitution of the United States.

CONCLUSION

For the foregoing reasons, it is earnestly submitted that a writ of certiorari should issue to review the judgment and opinion of the Court of Appeals of Kentucky.

Respectfully,

JOE HOBSON
Suite 2A, Richmond Plaza
Prestonsburg, Kentucky 41653
Counsel for Petitioners